

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  CORN BELT POWER COOPERATIVE	DOCKET NO. E-21570
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**ORDER CANCELLING HEARING, ACCEPTING COMPROMISE,  
AND ASSESSING CIVIL PENALTY**

(Issued February 1, 2002)

On January 9, 2002, the Utilities Board (Board) ordered Corn Belt Power Cooperative (Corn Belt) to appear on February 15, 2002, to show cause why civil penalties should not be imposed for alleged violations of Iowa Code chapter 478. Corn Belt filed a motion for compromise on January 22, 2002. In the motion, Corn Belt acknowledged that it is subject to the imposition of civil penalties as a result of its actions in beginning construction on an electric transmission line prior to obtaining a franchise. Corn Belt asked that the show cause hearing scheduled for February 15, 2002, be cancelled and that the Board determine and assess, without hearing, an amount of civil penalty it deems appropriate. The Consumer Advocate Division of the Department of Justice filed a response on January 24, 2002, stating that it had no objection to Corn Belt's motion for compromise.

The events leading to the January 9, 2002, show cause order are as follows. On December 11, 2001, Corn Belt filed a petition for franchise to construct and operate 2.65 miles of 69 kV electric transmission line in Kossuth County, Iowa. The

proceeding is identified as Docket No. E-21570. The petition for franchise has not been granted or otherwise ruled upon by the Board.

On January 8, 2002, Board staff was inspecting the proposed line route. The visual inspection found that the line was already under construction in that approximately two miles of new poles were installed complete with framing and insulators for a 69 kV circuit, with the remainder of the poles laid out ready for installation. The majority of Corn Belt's proposed line is on a route currently occupied by a 24 kV line belonging to Interstate Power and Light Company, f/k/a IES Utilities Inc. (Interstate Power). The petition for franchise filed by Corn Belt shows that a portion of the proposed line will be a double circuit line containing both Interstate Power's 24 kV circuit and Corn Belt's proposed 69 kV line. The 24 kV line was taken out of service temporarily in order to transfer the conductors to the new poles.

Iowa Code chapter 478 governs the franchise of electric transmission lines.

Iowa Code § 478.1 provides, in part:

A person shall not construct, erect, maintain, or operate a transmission line, wire, or cable which is capable of operating at an electric voltage of thirty-four and one-half kilovolts or more along, over, or across any public highway or grounds outside of cities for the transmission, distribution, or sale of electric current, without first procuring from the utilities board within the utilities division of the department of commerce a franchise granting authority as provided for in this chapter.

Chapter 478 does not allow construction to proceed absent the granting of a franchise, unless a temporary permit is obtained from the Board. A temporary permit, however, may only be issued for transmission lines that do not exceed one mile in

length. Iowa Code § 478.31. The line at issue, according to the petition for franchise filed by Corn Belt, is in excess of one mile.

On January 8, 2002, Board staff verbally notified Corn Belt that construction must cease immediately and not resume until a franchise was obtained from the Board. Board staff, however, did give verbal approval for completion of such work as is necessary to restore Interstate Power's 24 kV circuit to service so that customers' service would not be impacted by Corn Belt's actions. The Board in the January 9, 2002, show cause order agreed that the 24 kV circuit should be restored. The Board will permit Corn Belt to restore this circuit to service, but all other construction activities must cease.

Corn Belt's motion to compromise was accompanied by an affidavit by Kenneth H. Kuyper, senior vice-president of engineering and systems operations. In both the motion and affidavit, Corn Belt accepted responsibility for the error and said that all construction activities, except for restoration of Interstate Power's 24 kV circuit, halted immediately upon notification from the Board's staff. Corn Belt said it had authorized the placement of the poles in the mistaken belief that this did not constitute construction pursuant to Iowa Code § 478.1 because no wires or cables were erected on the poles at that time. Corn Belt noted that at least for the past 21 years it was not aware of any previous actions that subjected Corn Belt to an order to show cause proceeding.

Iowa Code § 478.29 provides that "[a] person who violates a provision of this chapter is subject to a civil penalty, which may be levied by the board, of not more than one hundred dollars per violation or one thousand dollars per day for a

continuing violation, whichever is greater." The provisions of Iowa Code chapter 478 are designed to safeguard the interests of ratepayers, adjoining landowners, and the public generally by providing that, before granting a franchise, the Board must determine, among other things, that the proposed line is necessary to serve a public use and represents a reasonable relationship to an overall plan of transmitting electricity in the public interest. Iowa Code § 478.4. Any person whose rights may be affected may object to the proposed franchise. Iowa Code § 478.5.

Section 479.29 also provides that the Board may compromise any civil penalty. The statute states:

In determining the amount of the penalty, or the amount agreed upon in compromise, the appropriateness of the penalty to the size of the business of the person charged, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance, after notification of a violation, shall be considered.

In this case, Corn Belt immediately ceased construction activities after notification from the Board's staff. It is noteworthy that Corn Belt stopped work promptly and did not continue its activities until the show cause order was issued on January 9. Corn Belt's motion and affidavit accept full responsibility for the violation and, in fact, asks the Board to impose the appropriate penalty without hearing. While Corn Belt states the violation was the result of its misinterpretation of the statute, Corn Belt offers this as an explanation, not an excuse. Finally, the Board has no record of any prior show cause proceedings involving Corn Belt.

The Board will accept the motion for compromise and cancel the show cause hearing scheduled for February 15, 2002. The Board will, pursuant to the motion for

compromise, proceed to impose civil penalties without hearing. The Board believes Corn Belt's action constituted a serious violation of Chapter 478 and that Corn Belt's interpretation of Iowa Code § 478.1 was without merit. The Board in particular notes that installation of poles is a permanent improvement and therefore constitutes "construction" under a prior declaratory ruling issued by the Board. See, Iowa Electric Light and Power Company, "Declaratory Ruling," Docket No. DRU-93-5 (November 5, 1993). Corn Belt's assertion that placement of poles without a franchise is standard utility practice is not based on any facts known to the Board or its staff. While pre-assembly of equipment on the poles in the staging area has been accepted by the Board's staff as an appropriate activity prior to obtaining a franchise, placement of poles has never been found to be appropriate until after the franchise is issued. The Board also finds the fact that all easements had been obtained is irrelevant. The fact all easements have been obtained does not eliminate the need for a franchise or cut off the rights of potential objectors, including those who have signed voluntary easements. See, Midwest Power, A Division of Midwest Power Systems Inc., "Decision and Order Granting Franchise," Docket Nos. E-21043, E-21044, and E-21045 (March 9, 1993), pp. 38-39.

While the Board finds the violation to be serious, Corn Belt's actions are mitigated by the fact it immediately ceased construction after notification from Board's staff. Corn Belt has also accepted responsibility for the violation and taken corrective action so similar violations will not occur in the future. Based on all the facts and circumstances of this case, the Board will impose a civil penalty of \$600.

By bringing this action and assessing this fine the Board puts all companies on notice that commencing construction without a franchise is not acceptable. Since this is the first time this has happened, there is no reason to assess the maximum fine. Should there be another incident in the state, the Board will reassess the level of fine necessary to achieve compliance.

**IT IS THEREFORE ORDERED:**

1. The motion for compromise filed by Corn Belt Power Cooperative on January 22, 2002, is accepted and, therefore, the show cause hearing scheduled for February 15, 2002, is cancelled.
2. Pursuant to Iowa Code § 478.29, Corn Belt Power Cooperative is assessed a civil penalty in the amount of \$600 for violation of Iowa Code chapter 478.
3. Copies of this order shall be served on all investor-owned electric utilities, electric cooperatives, municipal utilities, Iowa Association of Electric Utilities, Iowa Association of Municipal Utilities, and Iowa Utility Association.

**UTILITIES BOARD**

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

Dated at Des Moines, Iowa, this 1<sup>st</sup> day of February, 2002.